

REMARKS

The Final Office Action mailed July 13, 2006 has been carefully reviewed along with the references cited therein. In this response, claims 1, 17 and 21 have been amended. The claim amendments are discussed below. Claim 10 has been cancelled without prejudice.

Claim Rejections – 35 USC § 112

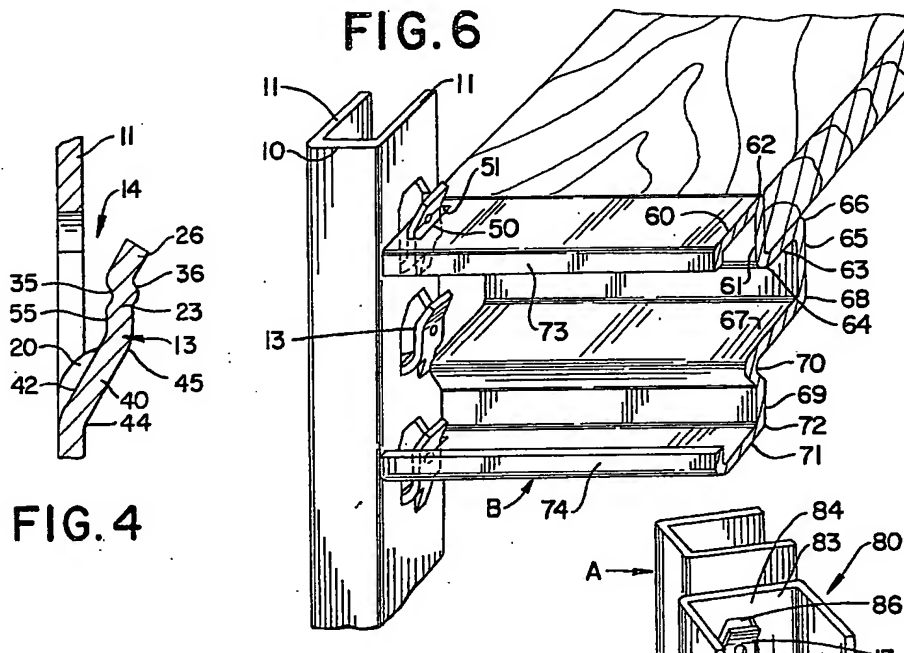
Claims 1, 5, 6, 9, and 14-21 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 17 and 21 have been amended to overcome the rejections.

Claim Rejections – 35 USC § 103

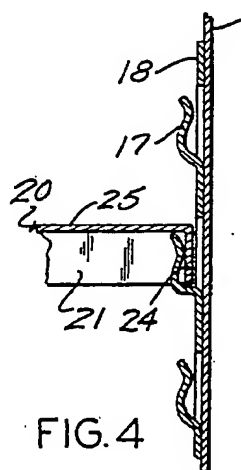
Claims 1, 6, 9, and 14-21 were rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (U.S. Patent No. 3,168,365) in view of Wise (U.S. Patent No. 2,911,275) and Vargo (U.S. Patent No. 4,142,638). Claim 5 was rejected under 35 U.S.C. 103(a) as being unpatentable over Evans in view of Wise and Vargo and further in view of Young (U.S. Patent No. 3,677,202). Claim 10 was rejected under 35 U.S.C. 103(a) as being unpatentable over Young in view of Vargo. Claim 10 has been cancelled.

With regard to claims 1 and 17, the Examiner states the Vargo discloses a shelving system including support members on opposite side walls where the support members include first and second legs and the second leg includes a substantially hemispherical dimple for mating with an opening in a flange of a shelf. The Examiner goes on to argue that "it would have been obvious ... to include dimples and receiving openings as taught by Vargo in Evans' support members because this arrangement would help prevent accidental removal of the shelves."

Vargo discloses a beam B having a horizontal surface that includes a rectangular opening 50. The rectangular opening 50 receives a second, vertically upwardly extending, portion 23 of the tab 13. Figures 4 and 6 from Vargo are copied below.



Evans discloses a vertical rear side wall 24 of a shelf 20 cooperating with a hook 17. Figure 4 from Evans is copied below.



There is simply no teaching in Evans to add an opening in side wall 24 to receive hook 17. Without the benefit of Applicants' disclosure, one skilled in the art would not

modify the vertical rear side wall 24 of Evans to include an opening where Vargo only teaches an opening in a horizontal surface. The Examiner is using impermissible hindsight. Arguably, one may modify Evans to include an opening in the main shelf panel 25 that would receive the hook 17, but this is not what is claimed in claims 1 and 17.

Moreover, without the benefit of Applicants' disclosure, one skilled in the art would not modify the vertical rear side wall 24 of Evans to include an opening dimensioned to receive a dimple on the hook 17 when the vertical rear side wall is received between the a leg of the hook and the metal strip 18. Vargo only teaches an opening dimensioned to receive the entire hook. The dimple 36 in Vargo only widens the thickness of the tab to be just less than the width of the rectangular opening 50 that receives the tab 13. Col. 3, lines 49 – 51. The Examiner's suggested combination would require a substantial reconstruction and redesign of the elements shown in Evans in a manner that is not suggested by Vargo.

Moreover, claim 1 has been amended to recite that the dimple is found in a straight portion of the second leg. This is supported by Figures 10 and 12 of applicants' specification. In contrast, both Evans and Vargo teach curved members (hook 17 and tab 13, respectively). There is simply no teaching or suggestion in either reference for a dimple formed in a straight portion of a leg. Rather, both Vargo and Evans rely on a curved wall to position the shelving. Accordingly, claims 1 and claims 5, 6, 9, 14, 15 and 16 dependent thereon are in condition for allowance.

Claim 17 recites that the shelf includes a flange depending substantially perpendicular from the planar surface. This is not shown in Evans. Rather Evans teaches an opening 50 for receiving tab 13. Claim 17 further recites that the opening is circular and that it receives the dimple of the first support member on the first side wall when the first flange is received between the second leg of the first support member and the first side wall to provide a frictional fit between the first flange and the first support member. Support for these amendments is found in paragraph [0025] and FIGURE 6 of applicants' specification. Furthermore, neither Evans nor Vargo teaches or suggests a circular opening that receives a dimple. Neither of these references teaches or suggests that the dimple is received to provide a frictional fit between the first flange and the first support member. Vargo simply discloses a rectangular opening that receives a tab. Accordingly, claim 17 and claims 18-21 dependent thereon further define over the cited references.

Finality of Rejection

The Examiner indicated that Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. "[S]econd or any subsequent Office actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement[.]" MPEP § 706.07(a) (emphasis added). In rejecting each independent claim, the Examiner relies on Vargo as disclosing a substantially hemispherical dimple. This limitation was added to independent claim 1, but this limitation was presented in original claim 4.

Original claim 4, which recited "wherein the protrusion comprises a substantially hemispherical dimple," depended directly from original claim 1. Original claim 4 was rejected in the first Office action as being unpatentable over Evans in view of Blackman (U.S. Patent No. 1,941,126). Applicants argued the impropriety of the Examiner's combination of Evans and Blackman in their first response. The Examiner did not reapply Blackman in the second Office action; instead, he performed a new search and located Vargo.

Applicants realize that other limitations were added to the claim in their previous Amendment (specifically original claims 7 and 8); however, these limitations were added to claim 1 to define over other references that were cited by the Examiner. The Examiner had the opportunity to thoroughly search the prior art in his first Office action to locate Vargo to reject original claim 4. Accordingly, Applicants' amendment did not necessitate the new ground for the rejection. Moreover, if the Examiner were to maintain the finality of the rejection, Applicants would be prematurely cut off in the prosecution of their application.

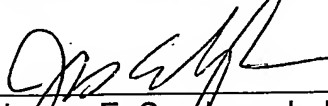
Applicants, therefore, petition the Examiner to remove the finality of the rejection to all claims. Moreover, Applicants request that the Examiner consider the amended claims. These claims do not raise new issues that would require further consideration and/or search, nor do they raise the issue of new matter. The claims that are presented in this Amendment should define over the cited references.

CONCLUSION

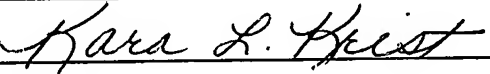
For the reasons detailed above, it is respectfully submitted all claims remaining in the application are now in condition for allowance. Accordingly, an early indication of the same is earnestly solicited. In any event, should the Examiner consider personal contact advantageous to the disposition of this case, the Examiner is encouraged to telephone the undersigned at the number listed below.

Respectfully submitted,

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10/13/06
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